

H. RICHARD WENDLING

IBLA 77-213 Decided July 6, 1977

Appeal from decision of the Acting District Manager, Bureau of Land Management, Casper, Wyoming, cancelling grazing lease 6662.

Affirmed.

1. Grazing Leases: Generally -- Grazing Leases: Cancellation or Reduction

A grazing lease is properly cancelled because of the lessee's loss of control of the lands which were recognized as the basis of the preference right to the lease.

APPEARANCES: David B. Park, Esq., Leimback and Park, Casper, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

H. Richard Wendling has appealed from a decision dated December 27, 1976, by the Acting Area Manager, Bureau of Land Management (BLM), Casper, Wyoming, cancelling grazing lease 6662.

The Acting Area Manager's decision informed appellant that his lease was being cancelled because BLM had requested that he show proof of ownership and control of preference lands and he had failed to do so.

On December 5, 1973, H. Richard Wendling as Buyer, and Wild Horse Ranch Corporation, as Seller, entered into an agreement for warranty deed. The subject of the agreement included the preference right lands recognized as base for grazing lease 6662. The terms of the agreement provided for payment over a period of years with a copy of the agreement, the executed warranty deed and all lease reassignments to remain in escrow at the First National Bank of Casper until full performance of the terms of the agreement.

By letter dated October 18, 1976, counsel for Wild Horse Ranch Corporation informed BLM that appellant was in default under the terms of the agreement because he had failed to pay any of the required installment payments.

BLM issued a notice to appellant dated October 22, 1976, stating that it had learned that appellant was in default and requesting that appellant submit proof that he was not in default if he desired to retain the lease.

BLM received a letter from appellant on November 1, 1976, stating that:

There is litigation on the property. Between 1st National Bank of Casper, Wild Horse Corp. & myself.

* * * * *

The property had abstract problems for over one year & the Bank returned the documents [illegible], we are present owners & we do hold all leases, and my name is on record on the contract for deed.

Although the record is not clear, it appears that grazing lease 6662 was renewed and fees paid on November 9, 1976.

Subsequently, counsel for Wild Horse Corporation informed BLM by letter dated December 16, 1976, as follows:

There has been no legal action instituted by either party. From the standpoint of Wild Horse Ranch Corporation, since we have legal title to and possession of the fee lands made the subject of the contract and have been provided with the redelivery of the escrowed documents, including the warranty deed conveying the same to Mr. Wendling, we see no purpose in filing an action against Mr. Wendling. We take the position that Mr. Wendling, not having instituted any action to date upon the termination of the agreement more than a year and a half ago, we are constrained to believe that he acquiesces and acknowledges his default in the performance of the contract.

Also enclosed with such letter was the affidavit of Margot Atwood, Escrow Officer, First National Bank of Casper. Ms. Atwood stated:

Neither Wendling nor anyone on his behalf, made any payments to the Escrow Department of the First

National Bank of Casper, Wyoming, upon the principal balance of the contract on November 1, 1974, or at any time thereafter.

* * * * *

4. On May 2, 1975, our Department determined H. Richard Wendling, the Buyer, to be in default by reason of the fact that he had made no payments nor had he delivered to the Escrow Department, reassignments of Forest Service Grazing Permit from Payor to Payee, two of the requirements placed upon him by the December 5, 1973 Agreement for Warranty Deed, I delivered to the Seller all documents in the escrow file of First National Bank of Casper, Wyoming related to this transaction and closed his file.

On December 27, 1976, BLM issued the decision cancelling the lease. On appeal appellant asserts that the Wild Horse Corporation was first in default and that "litigation to determine the title is in the process of being initiated." These bald assertions were accompanied by no evidence to substantiate their validity. Appellant has failed to show that he has ownership or control of the lands recognized as the basis for grazing lease 6662.

[1] A grazing lease is properly cancelled because of loss of control by the lessee of the lands which were recognized as the basis of his preference right to the lease. W. Doyle Wood, 25 IBLA 261 (1976); Harry Grabbert, 12 IBLA 255, 80 I.D. 531 (1973).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Martin Ritvo
Administrative Judge.

